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June 27, 2019

Via ECF only

Hon. Leda Dunn Wettre, U.S.M.J.  
United States District Court for the District of New Jersey  
Martin Luther King, Jr. Federal Building & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

Re: Erin Henderson v. New York Jets, LLC  
Civil Action No. 2:17-cv-10110 (SDW) (LDW)

Dear Judge Wettre,

We write on behalf of plaintiff Erin Henderson in response to defense counsel's letter filed dated June 26, 2019. That letter concerns a dispute as to whether plaintiff must not only identify his expert witnesses, provide the experts' reports, but also produce one of the experts for deposition before defendant can even conclude whether it will retain an expert in this case. We respectfully submit that the answer is an unequivocal no.

As noted by defense counsel, Plaintiff has retained Michael Lombardi, a former executive in the National Football League ("NFL") as one of his experts. On June 7, 2019, Plaintiff submitted Mr. Lombardi's report to defense counsel. Rather than identifying its expert and providing a responsive report (which we concede is not due until August 7, 2019), Defendant wants Mr. Lombardi's deposition presently ostensibly to seek "clarity" and possibly save time and money. Defense counsel argues that Defendants might not retain and call expert witnesses once this unidentified "clarity" is obtained via deposition.

Initially it should be noted that defense counsel makes the blanket statement that they (the Jets) believe that Mr. Lombardi has made a number of statements in his report that they believe are "unclear" yet those statements are not identified. He has not identified in any manner what issues or opinions he seeks clarity on or how, if he gets some clarity that will impact the decision whether or not to retain defense expert witnesses. Moreover, he further states that he seeks the deposition to allow him to determine whether or not the Jets need a responsive report without explaining how taking the deposition would enable the defense to determine whether or not to retain an expert witness.

The only party that would potentially save time and money, as a result of defendant's request is the defendant itself. This is assuming that defendant does not retain an expert and allowing it to depose Mr. Lombardi would inform that decision. As noted above, Defendant has not made this showing. In fact, the result would be the opposite. If Mr. Lombardi is deposed and then defendant chooses to retain an expert and provide a report, Mr. Lombardi would be expected to opine on the defendant's expert's opinion and very well may supplement his original opinion. Defendant would then undoubtedly seek to re-depose Mr. Lombardi based on his response. This would cause both parties to spend more time and money to depose Mr. Lombardi twice. Hence, Defendant is seeking to disturb the traditional order of expert witness discovery on the off chance that they may decide to forgo an expert witness.

Allowing Defendant to depose Plaintiff's expert before providing its own expert witness opinions would act as an ambush. Defendant and its expert witness would be armed with a deposition even before that witness provides his opinions. Whether intentional or not, this amounts to gamesmanship. Such a methodology would give the Defendants an unfair advantage when it comes to the expert witness aspect of the case.

It is unjust that plaintiff must not only disclose its expert and the expert's report, but also allow the expert to be deposed before defendant has even identified its expert let alone provided the opinions on which Defendant will rely.

If clarity is what defendant is seeking, then there are less restrictive ways of doing so. Defendant can send a letter to plaintiff's counsel outlining what statements Defendant considers unclear and in need of clarification. Plaintiff can then arrange to have Mr. Lombardi respond if he can. This would be the most efficient and cost effective way of obtaining clarification if same can be achieved rather than subjecting the expert to a full blown deposition (at this point) where qualifications, the work done on the case, the materials reviewed, the facts considered or discarded, the opinions offered and the basis thereof would be the subject of hours of questioning.

Allowing the methodology that defendant seeks defies all logic. Assume for example, parties serve interrogatories on the other with the following inquiry: identify all individuals with knowledge of facts in the case. One party, however, refuses to respond until it has had the opportunity to depose the individuals identified in the other party's answers to interrogatories and learn the facts. The argument, ostensibly, being if it can obtain clarity as to what such individuals are saying, then it can circumvent the need to respond fully with its own discovery responses saving the party time and money. This cannot be so. Additionally, it would wreak havoc on the discovery process.

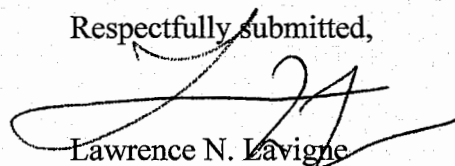
Lastly, Defendant has not indicated that it will even be able to retain an expert witness and report by the time Lombardi's deposition is taken and the defensive expert witness reports are due. Also, Defendant has not indicated if it has retained any experts to date which if they have, should be disclosed to at least Your Honor.

Defendant has not provided any basis to deviate from the traditional discovery pattern. Plaintiff has identified his experts and provided their reports. It is now up defendant to identify its experts and provide their reports or declare that they will not be retaining any experts. Once it

does so, plaintiff will produce the experts for deposition within the time set forth in the case management order.

Should Your Honor require any additional information including a copy of Mr. Lombardi's report, kindly advise.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'L. Lavigne', written over the printed name.

Lawrence N. Lavigne

CC: Adam Saravay, Esq. via ECF